IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-01-2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.37980 of 2004
and
CRL.M.P.NO.11958 OF 2004

Udayasingh,
Director,
Namdhari Seeds (P) Ltd.,
Thummanatty,
The Nilgiris. ... Petitioner

Vs.

The State of Tamilnadu
rep.,by the Inspector of
Factories, Ootacamund. ... Respondent

Criminal Original Petition under Section 482 of Cr.P.C. as stated therein.

For Petitioner : Mr.S.K.Rakhunathan
For respondent : Mr.A.N.Thambidurai,
Govt. Advocate (Crl.side)

* * *

O R D E R

The above Criminal Original Petition is filed praying to call for the records in S.T.R.No.4 of 2004 on the file of the learned Chief Judicial Magistrate, Ootacamund and quash the proceedings.

2. Tracing the history of the case, what comes to be known is that the petitioner is having a Green House at Mynala where pollination and cross-pollination of flowers are being done with the help of nature; that since the pollination is done by human hand selectively and thereafter the seed harvesting is done after 55 to 60 days of pollination and thereafter it will be sent to the Laboratory at Biddadi, Karnataka for further

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processing and for marketing and since there is no manufacturing processes is undertaken nor any marketing processes is conducted by the petitioner, the petitioner is not a factory as per the provisions of the Factories Act; that the respondent has issued a show cause notice dated 3.3.2004 calling upon the petitioner company to explain within 7 days of receipt of the said notice as to why the petitioner company should not be prosecuted for the irregularities explained to it in person on 21.2.2004 at the time of inspection i.e. (1) the petitioner has violated Rule B (1) Sub-Rules 3(1)(2), Rule 6(1) Sub-Rule 4(1), (2) and (3) read with Explanation 12-B(5), Section 112 Explanation 103 of the Factories Act 1948 read with Tamilnadu Factories Rules 1950; that the petitioner sent a reply dated 15.3.2004 wherein it was brought to the notice of the respondent that the petitioner company is only having its green house and Nursery and by no stretch of imagination the Green House and Nursery could be brought within the definition of Manufacturing Process for holding the same to be a factory and that since the same is not a factory there is no question of obtaining any License or is utilizing a 10 H.P. Motor for drawing water from their own well for the purpose of drip-irrigation for plants in the green house and that therefore usage of 10 H.P. Motor for drawing water cannot lead to the conclusion that the petitioner is having a factory at Ootacamund and that there are no permanent workmen employed by the petitioner company and that the workers are transient and engaged for the purpose of maintaining the Green House and that since the operation of the petitioner company is purely agricultural and floricultural pollination operation, the same cannot at all be said to be a factory within the meaning of Factories Act and requested the respondent to drop the proceedings.

3. The further case of the petitioner is that the respondent having been not satisfied with the explanation offered, lodged a complaint in S.T.R.No.4 of 2004 before the Court of Chief Judicial Magistrate, Ootacamund for punishing the petitioner on ground that the petitioner violated the provisions of the Factories Act and Rules framed thereunder and requested the Court to take cognizance of the offence and punish the petitioner. On such averments, the petitioner would pray for the relief extracted supra.

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4. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent as well and the materials placed on record have also been perused.

5. During arguments, the learned counsel for the petitioner would submit that the petitioner is having a Green House only for the purpose of pollination and cross-pollination of Flowers and therefore the same is not a factory as defined by Section 2

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(m) of the Factories Act; that further no manufacturing process is carried out in the said Green House and therefore, the definition of manufacturing processes as defined under Section 2 (k) of the Factories Act cannot be made applicable to the petitioner; that since the petitioner is not carrying on any manufacturing process, the question of the Factories Act 1948 as amended and the Rules framed thereunder are not applicable to the petitioner and therefore, there is no question of initiating any criminal prosecution against the petitioner under the said Act and hence he would pray to quash the said criminal proceedings against the petitioner.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the arguments of the learned counsel for both, it could be analyzed that the respondent Inspector of Factories, Ootacamund on a personal inspection made to the place of Floriculture Centre of the petitioner has registered the case after issuing the show-cause notice for the violation of Rule B(1) Sub-rules 3(1) (2), Rule 6 (1) Sub-rules 4(1),(2) and (3) r/w Explanation 12-B (5), Section 112 Explanation 103 of the Factories Act, 1948 (hereinafter called as the 'Act') r/w Tamilnadu Factories Rules, 1958. Therefore it could be understood that the point for consideration is whether the concerned rules have been violated so as to initiate the prosecution for violation of such rules and for prosecution under relevant provisions of law and the rules cited supra.

7. On the part of the petitioner he would come forward to argue to the effect that the petitioner concern is not a factory as defined under Section 2(m) of the said Act. However, it is argued on the part of the petitioner that no manufacturing process is carried on in the premises of the petitioner called 'Green House' and therefore the definition of manufacturing process defined within the meaning of Section 2 (k) of the said Act cannot be made applicable to the factory concerned.

8. Undoubtedly, the question whether the activities undertaken in the said 'Green House' which was subjected to inspection by the respondent is one undertaking the manufacturing process so as to fall within the definition of Section 2 (k) of the said Act is a question of fact and it could be decided only on trial and not by this Court just taking into consideration of the statement of the petitioner that no manufacturing process is carried out in the said 'Green House' which is not admitted on the part of the respondent and therefore the relief sought for on the part of the petitioner to quash the proceedings initiated in the Court of Chief Judicial Magistrate, Ootacamund by the respondent does not arise at all. Instead it is a case wherein the factual position alleged on the

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part of the petitioner has to be elaborately gone into by the trial court with due opportunity for the other side also to be heard so as to arrive at a valid decision on such factual position of the case pleaded on the part of both sides and therefore needless to mention that the trial to be held by the jurisdictional Court is the answer and hence the following order.

In result,

(i) For all the above discussions held, the above Criminal Original Petition does not merit acceptance but becomes liable to be dismissed and is dismissed accordingly;

(ii) Consequently, connected Criminal Miscellaneous Petition No.11958 of 2004 is also dismissed.

17-01-2005

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Judicial Magistrate,
Ootacamund.

2.The Inspector of Factories
Ootacamund.

3. The Public Prosecutor,
High Court, Madras.

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